

Military Construction Funding in the Event of a National Emergency

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The President's reported consideration of whether to invoke various statutory authorities (including some triggered by a declaration of a national emergency) to direct the Department of Defense (DOD) to construct "a [physical barrier](#)" along the U.S.-Mexico border has raised questions about potentially available appropriated funds. This Insight identifies previous military construction projects funded through emergency authorities and unobligated military construction funding balances.

Title [10 U.S.C. Section 2808](#) is entitled *Construction authority in the event of a declaration of war or national emergency* and depends upon a "declaration of war or the declaration by the President of a national emergency in accordance with the National Emergencies Act [NEA] ([50 U.S.C. 1601 et seq.](#)) that requires use of the armed forces." A declaration by the President under the NEA must detail the statute under which action will proceed. For discussion of the authorities the President may utilize after declaring a national emergency in accordance with the NEA, see CRS Legal Sidebar LSB10242, *Can the Department of Defense Build the Border Wall?*, by Jennifer K. Elsea, Edward C. Liu, and Jay B. Sykes.

Previous Instances

Presidents have invoked the NEA twice citing the emergency military construction authority set forth in 10 U.S.C. 2808. During Operation Desert Shield, President George H.W. Bush issued [EO 12734 of November 14, 1990](#). In the aftermath of the September 11, 2001, terrorist attacks President George W. Bush issued [Executive Order 13235 of November 16, 2001](#). In the latter, the president was required and able to renew the authority.

Previous Military Construction Projects

According to DOD information, from 2001 through 2014, the department funded a total of 18 projects under 10 U.S.C. 2808, after the President invoked the NEA, with a combined value of \$1.4 billion. With the exception of one project dating from December 2001 related to security measures for weapons of mass destruction at sites in the continental United States, most of the projects took place at overseas locations (see [Table 1](#)).

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Table I. Department of Defense Use of Authority Per 10 U.S.C. 2808
(2001-2014)

Date	Component	Location	Amount (in millions of dollars)	Description of Project
11/21/2001	Air Force	To support Operation Enduring Freedom	26.7	Expand aircraft parking ramps and build hangars at two forward operating locations
12/4/2001	Army	Arkansas, Indiana, Kentucky, Maryland, Oregon	35.0	Security measures for weapons of mass destruction
11/17/2006	Army	Guantanamo	102.0	Secure courthouse and support facilities
9/18/2008	Army	Bagram, Afghanistan	38.8	Barracks, power line, and road
5/9/2009	Air Force	Afghanistan	41.3	Airfield runway and apron pavement improvements
5/29/2009	Army	Afghanistan, Iraq	136.2	Waste management complex, fuel storage, security improvements, ammo storage, medical facility, and logistics support area
6/2/2010	Air Force	Afghanistan	59.0	Airfield pavement improvements
8/25/2010	Air Force	Qatar, UAE, Kuwait, Afghanistan	129.1	Fuel facilities, passenger and freight terminal, cargo holding area, billeting, network control center, satellite communications facility, maintenance center, electrical substation, special operations forces (SOF) aviation complex, and ramp
8/16/2011	Army	Afghanistan	74.0	Detention facility expansion, airfield pavement improvements, and tanker truck facility
1/13/2012	Air Force	Camp Lemonnier, Djibouti	6.3	Aircraft parking, taxiway, and aircraft shelter

Date	Component	Location	Amount (in millions of dollars)	Description of Project
1/30/2012	Air Force	Qatar, Afghanistan, Oman, Kyrgyzstan	141.2	SOF apron, taxiway, communications facility, ammo storage area, and airlift apron
3/5/2012	Army	Parwan, Afghanistan	53.3	Detention housing and dining facility
6/1/2012	Army	Afghanistan	28.0	Logistics hub, security improvements, and waste water treatment plant
6/15/2012	Air Force	Camp Lemonnier, Djibouti	187.0	Combat Aircraft Loading Area (CALA) and billeting
6/30/2012	Army	Afghanistan	86.0	Waste management complex and utility projects
8/20/2012	Air Force	Camp Lemonnier, Djibouti	24.0	Parallel taxiway extension
8/20/2012	Navy	Naval Support Act Bahrain	45.2	Waterfront development
6/14/2013	Navy	Camp Lemonnier, Djibouti	228.0	Task Force Compound
TOTAL			1,441.1	

Source: DOD.

Funding

Section 2808 does not appear to cite a cost limitation per a project. However, it specifies as a source of funding certain available military construction funds. Subsection (a) states, “Such projects may be undertaken only within the total amount of funds that have been appropriated for military construction, including funds appropriated for family housing, that have not been [obligated](#).”

According to DOD information, the department reported unobligated balances in the military construction and family housing accounts totaling \$13.3 billion at the end of FY2018 (see [Table 2](#)).

Table 2. Status of Unobligated Balances for Military Construction (MILCON) and Family Housing Titles

(in thousands of dollars, as of September 30, 2018)

Account	Period of Availability	Appropriated Amount	Unobligated Balance	% Unobligated
MILCON	2014/2018	7,969,801	244,377	3%
MILCON	2015/2018	119,946	3,887	3%
MILCON	2015/2019	4,947,617	654,158	13%
MILCON	2016/2020	6,791,551	1,774,080	26%
MILCON	2017/2021	6,797,713	2,821,042	41%

Account	Period of Availability	Appropriated Amount	Unobligated Balance	% Unobligated
MILCON	2018/2022	9,896,613	6,755,989	68%
Base Realignment and Closure		2,836,102	204,806	7%
NATO Security Investment Program		7,874,381	196,231	2%
Family Housing	2014/2018	229,247	57,598	25%
Family Housing	2015/2019	82,698	11,328	14%
Family Housing	2016/2020	345,528	176,791	51%
Family Housing	2017/2021	319,535	167,082	52%
Family Housing	2018/2022	355,906	323,455	91%
Family Housing	2018/2018	1,127,108	52,147	5%
Family Housing Improvement Fund		4,301,107	18,812	0%
Unaccompanied Housing Improvement Fund		80,332	632	1%
Homeowners Assistance Program		2,923,870	40,083	1%
MILCON Subtotal		47,233,724	12,458,339	26%
Family Housing Subtotal		9,765,331	847,928	9%
Grand Total		56,999,055	13,306,267	23%

Source: The Report of the Department of Defense on Fourth Quarter Fiscal Year 2018 Bid Savings and Unobligated Balances for Military Construction and Family Housing Accounts (Execution as of September 30, 2018).

The figures cited above do not account for unobligated balances resulting from FY2019 appropriations.

The 2019 Energy and Water, Legislative Branch, and Military Construction and Veterans Affairs Appropriations Act (H.R. 5895; P.L. 115-244) appropriated a total of \$11.3 billion in military construction budget authority, including \$10.3 billion in Title I—Department of Defense (DOD) for the department’s base, or regular, budget, and \$921 million in Title IV—Overseas Contingency Operations (OCO). These figures can be found in the funding tables in H.Rept. 115-929, the conference report accompanying the bill. These amounts reflect budget authority—not obligations (or unobligated amounts). Because military construction appropriations are generally available for obligation for up to five years, the department likely has a different amount of unobligated military construction funding than the total appropriated amount for any given fiscal year.

In general, as part of the President’s annual budget submission to Congress, the Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer publishes a spreadsheet, entitled “[Military Construction, Family Housing, and Base Realignment and Closure Program \(C-1\)](#),” which details funding amounts, facility title, and installation or location for individual military construction projects.

Congressional Notification and Reprogramming

The use of Title 10 Section 2808 requires congressional notification. Subsection (b) states, “When a decision is made to undertake military construction projects authorized by this section, the Secretary of Defense shall notify ... the appropriate committees of Congress of the decision and of the estimated cost of the construction projects, including the cost of any real estate action pertaining to those construction projects.”

Nevertheless, according to DOD regulations the use of Section 2808 does not require a request to Congress for reprogramming (i.e., a change in the application of funds). The DOD Financial Management Regulation (FMR; DOD 7000.14-R), Paragraph 170303, Subsection (A), “[Construction in the Event of a Declaration of War or National Emergency](#),” highlights additional guidance in DOD Directives (DODD) [3025.18](#) and [4270.5](#), the latter of which states reprogramming is not required for construction projects under 10 U.S.C. 2808.

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